CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

May 3, 2006

H.R. 5252
Communications Opportunity, Promotion, and Enhancement Act of 2006

As ordered reported by the House Committee on Energy and Commerce on April 27, 2006

SUMMARY

H.R. 5252 would allow providers of cable service to apply to the Federal Communications Commission (FCC) for a national franchise. National franchises would be substitutes for separate, negotiated agreements with states and localities regarding the provision of cable service to a local area. The bill also would require providers of Internet-based telephone service known as Voice-over-Internet-Protocol (VOIP) to provide access to emergency 911 telephone service. Finally, H.R. 5252 would require the FCC to conduct several studies related to telecommunications services.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 5252 would cost less than $500,000 in 2006 and about $7 million over the 2006-2011 period. Enacting the bill would not have a significant effect on direct spending or revenues.

H.R. 5252 contains several intergovernmental mandates, as defined in the Unfunded Mandates Reform Act (UMRA). In particular, it would prohibit intergovernmental entities —primarily municipal governments—from charging certain fees to providers of cable service. The bill also would impose a variety of requirements and limitations on public safety access points (PSAPs). Further, the bill would preempt state laws that prohibit municipal governments from providing Internet access services and, if area cable providers receive a national franchise, would preempt state and local laws that address consumer protection, cable franchises, and the use of municipal rights-of-way. CBO estimates that the net direct costs of these mandates on state and local governments would grow over time, and would likely fall between $100 million and $350 million by 2011. Such losses would exceed the threshold established in UMRA in at least one of the first five years the mandates are in effect (the threshold is $64 million in 2006 and is adjusted annually for inflation).

Other impacts of the bill include potential losses to intergovernmental entities of in-kind support from cable franchisees.

H.R. 5252 also would impose private-sector mandates as defined by UMRA on broadband service providers, and on private entities that own 911 components necessary to transmit VOIP emergency 911 services over their networks. Based on information from government and industry sources CBO estimates that the costs of complying with those mandates would fall below the annual threshold established by UMRA for private-sector mandates ($128 million in 2006, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 5252 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars					
	2006	2007	2008	2009	2010	2011
CHANGES IN SPENDING SUBJECT TO APPROPRIATION[a]						
Estimated Authorization Level	*	2	2	1	1	1
Estimated Outlays	*	2	2	1	1	1

NOTE: * = less than $500,000.

a. Enacting H.R. 5252 also would have small effects on direct spending and revenues, but CBO estimates that those effects would be less than $500,000 a year.

BASIS OF ESTIMATE

CBO estimates that implementing H.R. 5252 would cost less than $500,000 in 2006 and about $7 million over the 2006-2011 period to issue regulations, write reports and studies, and enforce the bill's provisions regarding new cable franchises and VOIP. For this estimate, CBO assumes that the bill will be enacted before the end of 2006, that the estimated amounts will be appropriated for each year, and that outlays will follow historical spending patterns for similar activities. Enacting the legislation would not have a significant effect on direct spending or revenues.

Spending Subject to Appropriation

H.R. 5252 would allow providers of cable service to apply to the FCC for a national franchise in lieu of negotiating separate franchise agreements with states and localities for providing cable service to a local area. The bill also would require VOIP providers to connect users to emergency 911 telephone service. Under the bill, the FCC would certify the new national franchises, conduct annual audits of the new franchises, and create regulations regarding the new franchising structure and VOIP emergency services. Finally, H.R. 5252 would require the FCC to conduct several studies regarding telecommunications services, including VOIP, municipal provision of telecommunications services, and broadband Internet service.

Based on the level of effort required for previous major rulemaking efforts by other agencies, CBO estimates that implementing H.R. 5252 would cost less than $500,000 in 2006 and about $7 million over the 2006-2011 period for the FCC to develop and issue regulations, write reports, and enforce the bill's provisions related to cable franchises and VOIP. Those costs would be subject to the availability of appropriated funds.

Revenues and Direct Spending

Enacting H.R. 5252 would affect revenues and direct spending because enacting the bill would affect civil penalties and copyright royalties. CBO estimates that any such effects would not be significant.

Civil Penalties. Enacting H.R. 5252 could increase federal revenues by increasing collections of additional civil penalties assessed for violations of laws related to providing telecommunications services. Collections of civil penalties are recorded in the budget as revenues. CBO estimates, however, that any additional revenues that would result from enacting the bill would not be significant because of the relatively small number of cases likely to be involved.

Enacting the bill could increase direct spending because section 101 would require the FCC to distribute certain penalties collected from cable companies to state or local franchising authorities. CBO estimates that any distributions of penalties to state or local franchising authorities would not be significant because of the relatively small number of cases likely to be involved.

Copyright Royalties. Under current law, the users of certain copyrighted material must pay royalties and abide by certain conditions when using the material. The Copyright Office collects royalties from users of certain copyrighted material and then distributes the royalties to owners of copyrighted works. The receipt of royalties from users of copyrighted material are recorded in the budget as federal revenues, and the distributions to copyright owners are recorded as federal spending. Under current law, cable operators pay royalties to transmit distant broadcast signals to cable viewers, and satellite carriers pay royalties to retransmit distant network and superstation signals by satellite.

The national franchising provisions included in H.R. 5252 would allow new entrants into the market for providing cable service to connect to households faster than would otherwise be expected. CBO expects that enacting the bill could affect the collection and distribution of copyright royalties. Total copyright royalties paid for services provided to existing subscribers could increase or decrease as subscribers switch from existing satellite or cable service to cable service provided by new entrants. Copyright royalties would increase as subscribers who currently do not subscribe to either satellite or cable service opt to subscribe to cable services provided by new entrants. Based on information provided by the Copyright Office and cable and telecommunication firms, CBO estimates that the net effect of enacting this legislation on copyright royalties in any year over the 2006-2016 period would not be significant.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

Intergovernmental Mandates Contained in the Bill

H.R. 5252 contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act. Specifically, the bill would:

- Eliminate the authority, in certain circumstances, of local entities to issue franchises for cable providers;

- Prohibit intergovernmental entities—primarily municipal governments—from imposing certain fees on providers of cable services;

- Require public safety access points to make their systems accessible to the providers of a type of telephone service known as Voice-over-Internet-Protocol and to make certain information available to the FCC;

- Limit the fees that local governments can charge VOIP providers for access to emergency 911 services;

- Preempt state and local consumer protection laws;

- Preempt local government authority over municipal rights of way; and

- Preempt state laws prohibiting local governments from offering certain services to provide Internet access.

The bill would require there to be competition for video services other than satellite in any franchise area before providers of such services could apply for a national franchise. Such competition would likely come from those companies that have traditionally provided telephone service. While the speed with which new providers would offer such service is uncertain, industry sources suggest that these companies would offer cable services under the bill in at least 10 percent to 20 percent of franchise areas by 2011. Based on this information and the large number of franchises nationwide (about 30,000), CBO estimates that the net costs of complying with the intergovernmental mandates in the bill would, in aggregate, exceed the threshold established in UMRA in at least one of the first five years that the mandates are in effect (the threshold is $64 million in 2006 and is adjusted annually for inflation).

CBO estimates that prohibiting intergovernmental entities—primarily municipal governments—from raising certain revenues from providers of cable services that have a national franchise would impose the most significant costs resulting from the mandates. By increasing competition in some markets, enacting the bill would likely lead to more people subscribing to cable services that are subject to local franchise fees. Thus, local governments would gain new revenues that partially offset those costs.

CBO further estimates that the requirements on PSAPs, the limitations on the ability of state and local governments to charge fees to VOIP providers, and the other preemptions in the bill would probably not impose significant costs on intergovernmental entities.

Estimated Direct Cost of Mandates to State and Local Governments

Under current law, Local Franchise Authorities (LFAs) in most states negotiate compensation with cable providers seeking to serve their franchise area. (In at least three states, the law provides for a statewide franchise). Each agreement is different, and the amount of forgone revenue from the bill's prohibition would depend on the specifics of each franchise agreement preempted by a national franchise. Current federal law caps fees for the franchise at 5 percent of gross revenues—a fee maintained in H.R. 5252. However, local governments also negotiate fees for public, educational, and governmental (PEG) programming—some in cash and some in-kind—totaling, on average, between 1 percent and 3 percent of the gross revenues of the provider. In general, urban and suburban areas have a higher percentage of PEG contributions than do nonurban areas. The bill would limit charges by LFAs to 1 percent of gross revenues of cable providers.

By prohibiting intergovernmental entities from charging certain cable providers more than 1 percent of gross revenues to provide PEG programing, enacting the bill would lead to a loss in state and local revenues. CBO estimates that the gross costs of this prohibition—that is, the amount of the revenues that state and local governments would no longer be able to collect—would grow to between $150 million and $450 million by 2011.

UMRA includes in its definition of the direct costs of a mandate the amounts that state and local governments would be prohibited from raising in revenues to comply with the mandate. Thus, CBO counts as direct costs the cash portion of what state and local governments would be prohibited from charging under the bill.

At the same time, however, the bill would likely increase competition for cable service, decreasing the average price for such service. As a result, more people would likely subscribe to cable services, and they would pay additional franchise fees to local governments that would offset some of the state and local government losses described above. CBO estimates that these new revenues would total about 25 percent of aggregate losses. On balance, we estimate that the net costs of this mandate would likely fall between $100 million and $350 million by 2011.

Under H.R. 5252, it is likely that competitors would increase the speed with which they enter the cable market because costly barriers to entry would be removed. Under current law, there is competition in fewer than 5 percent of local franchise areas. Under the provisions of the bill, new entrants would likely increase the areas to which they provide cable service, reaching into at least 10 percent to 20 percent of franchise areas by 2011. As competition increases, more cable providers would likely apply for national franchises, and as national franchises increase, forgone revenues to state and local governments also would increase. While losses would depend on the specifics of the franchise agreements in the areas with new entrants and industry business plans, average PEG rates in such areas suggest that forgone revenues would likely total at least 1 percent to 2 percent of the gross revenues for cable providers in areas with a national franchise.

Other Impacts on State and Local Governments

The bill also would impose a significant impact on state and local governments not covered under direct costs or direct savings in UMRA. Specifically, such entities would incur some in-kind losses from enactment of the bill.

In franchise agreements, cable providers often agree to complete and maintain a variety of in-kind contributions to public entities including schools, police and fire stations, libraries, and other municipal buildings. These are called institutional networks (INETs). Providers often will also supply studios and equipment for public access television stations to support PEG programming. Depending on the interpretation of the bill's provision concerning maintenance of INETs, anecdotal information from several local governments suggest they could lose in-kind contributions totaling several million dollars. Most communities in areas where cable providers receive a national franchise would forgo some in-kind benefits for PEG programming.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 5252 would impose mandates as defined by UMRA on broadband service providers, and on private entities that own 911 components necessary to transmit VOIP emergency 911 services over their networks. Based on information from government and industry sources CBO estimates that the costs of complying with those mandates would fall below the annual threshold established by UMRA for private-sector mandates ($128 million in 2006, adjusted annually for inflation).

The bill would impose mandates by:

- Prohibiting broadband service providers from requiring subscribers to purchase other services as a bundle; and

- Requiring certain entities that own 911 components to allow VOIP providers access to their infrastructure.

Unbundling of Broadband Services

Section 501 would prohibit any provider of broadband services from requiring a subscriber to purchase other services offered by the provider (including cable service, telecommunications service, or VOIP) as a condition of purchasing broadband service.

The costs of the mandate would be the expenditures necessary for converting systems to offer stand-alone service and the ongoing loss of net income from the direct lost sales. According to industry sources most of the industry already offers stand-alone broadband services. The cost of compliance for the remaining providers of converting their systems would be small.

Broadband service providers also could lose income as some consumers chose to subscribe only to the broadband service, forgoing any bundled services. Assuming the providers of broadband service who currently provide stand-alone service continue to do so independent of the mandate, the net loss of income should be small relative to the threshold.

Making 911 Components Accessible to VOIP Providers

Section 301 would clarify FCC regulations relating to VOIP access to 911 and E911 infrastructure. The language in section 301 would impose a new mandate on all private entities that own 911 components necessary to transmit VOIP emergency 911 services over their networks. Section 301 would require such entities to allow VOIP providers to have full access to the necessary 911 components. Owners of 911 components would be able to charge VOIP providers a fee for using their network components, but would be mandated to enter into such agreements with those providers. Large private entities that own 911 components have most of the infrastructure in place to comply with the mandate. Some smaller owners of 911 components may not have such capacity and would incur costs to comply with the mandate. Based on information provided by industry and government sources, CBO expects that the direct costs of complying with this mandate would be minimal.

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